HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Writ Petition No. 186 of 2006 (M/S)

Rajendra Mishra
S/o Shri Ram Datt Mishra
R/o House No. 348/7
West Amber Tallab, Roorkee
P.S. Gangneher Roorkee
District Haridwar .....Applicant

Versus

1. Addl. Judge, Family Court, Roorkee
   District Haridwar
2. Smt. Jayanti Mishra
   W/o Shri Rajendra Mishra
   D/o Shri Sita Ram Sharma
   At present R/o Housee No.26
   Peer Baba Colony
   Near World Bank Colony
   P.S. Kotwali Roorkee
   District Haridwar
3. Km. Maahi Mishra aged about $2_{1/2}$ years
   D/o Shri Rajendra Mishra
   At present R/o House No. 26 Peer Baba Colony
   Near World Bank Colony
   P.S. Kotwali Roorkee
   District Haridwar
   Through her natural
   mother Smt. Jayanti Mishra .....Respondents.

Hon'ble J.C. S. Rawat, J.

Heard Sri Mahavir Singh Tyagi learned counsel for the applicant and Sri A. Rab Addl. G.A.

The petition under section 226/227 of the Constitution of India has been filed for setting aside the impugned order dated 8.9.2005 passed by the Addl. Judge, Family court, Roorkee, District Haridwar in case No.49/2005 Jayanti Mishra Vs. Rajendra Mishra under section 125 Cr. P.C., whereby Rs.500/- p.m. and Rs. 300/- p.m. have been awarded as interim maintenance to the respondent No.2 & 3 respectively. Thus, the total sum of Rs.800/- has been awarded as interim maintenance.

It is admitted that the marriage was solemnized between the applicant and Smt. Jayanti Mishra on 26.10.2001 according to Hindu rites and customs. It is not in dispute that the parties are living separately and their relations are strained. It is also not disputed that out of their wedlock one child-Km. Maahi (respondent No.3) was born out. The respondent No.2 & 3 moved an application under Section 125 Cr. P.C. against the applicant-Rajendra Mishra. During the pendency of the said petition, the respondent No.2 & 3 preferred an application for interim maintenance before the court below and the same was allowed vide order dated 8.9.2005 whereby Rs. 800/- p.m. and Rs.300/- p.m. were awarded to them as interim maintenance. The averment made in the application that the applicant has neglected to pay the maintenance. It was alleged before the court that the applicant-husband is earning Rs. 15,000/- p.m. from the agriculture and dairy farm. It is also not disputed that the brother of the applicant died in an accident and the applicant received a sum of Rs. 3,28,189/-as insurance claim. Though, it was contended that the said amount will also be disbursed in other legal heirs of the deceased. But, there was no affidavit on record before the trial court that other persons are also entitled for the same. The husband has not controverted the allegations made in the application filed by the wife and no counter affidavit has been filed. As such, the allegations made in the application filed by the wife are un-rebutted.

The applicant has neglected to maintain his wife and child. Applicant has sufficient means to pay the maintenance to the respondents. As such, the respondents are entitled to get the interim maintenance from applicant.

In view of the above, I am in completely agreement with the findings given by the court below.

The petition devoids of merit and is dismissed accordingly.

Dated 03.03.2006
LSR